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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,191	02/18/2004	Floyd Backes	160-022	1762
34845	7590	06/04/2008		
Anderson Gorecki & Manaras LLP				
33 NAGOG PARK				
ACTON, MA 01720				
EXAMINER				
BEAMER, TEMICA M				
ART UNIT		PAPER NUMBER		
2617				
NOTIFICATION DATE		DELIVERY MODE		
06/04/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/781,191

Applicant(s)

BACKES ET AL.

Examiner

TEMICA M. BEAMER

Art Unit

2617

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments.

1. Applicant's arguments filed 10/9/2007 with respect to the rejection(s) of claim(s) 1-5 have been fully considered and are persuasive. Therefore, prosecution has been reopened and the previous rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth below.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-5 lack the proper preamble for computer related claims. See MPEP 2100 for the proper preamble for computer related inventions.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Whelan, U.S. Patent Pub. No. 2005/0003827.

Regarding claim 1, Whelan discloses a first fixed-location device capable of communicating in a wireless communications environment via a radio frequency channel, comprising logic for detecting that a second fixed-location device is also using the radio frequency channel (abstract, 0016, 0333) and logic for adjusting transmit power to decrease interference with the second fixed- location device (0105, 0138).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whelan in view of Shpak, U.S. Patent Pub. No. 2005/0195786 .

Regarding claim 2, Whelan discloses the location device of claim 1 as described above. Whelan, however, fails to disclose wherein the logic for adjusting transmit power does so in response to a message received from the second fixed location device, the message indicating the power level of the second fixed-location device.

In a similar field of endeavor, Shpak discloses spatial reuse of frequency channels in a WLAN. Shpak further discloses wherein two or more fixed location devices (access points) can use transmit power control (TPC) messages among them in an effort to minimize interference. The TPC messages allow the access points to determine the power level of signals transmitted between the access points and mobile stations, thus determining interference in the system. The power can then be adjusted between the access to reduce interference in the system (0008, 0040).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to modify Whelan with the teachings of Shpak for the purpose of further minimizing system interference.

Regarding claim 3, Whelan discloses a first fixed-location device capable of communicating in a wireless communications environment via a radio frequency channel the program product comprising logic for detecting that a second fixed-location device is also using the radio frequency channel (abstract, 0016, 0333); logic for adjusting transmit power to decrease interference with the second fixed- location device (0105, 0138).

Whelan, however, fails to disclose wherein the logic for adjusting transmit power does so in response to a message received from the second fixed location device, the message indicating the power level of the second fixed-location device.

In a similar field of endeavor, Shpak discloses spatial reuse of frequency channels in a WLAN. Shpak further discloses wherein two or more fixed location devices (access points) can use transmit power control (TPC) messages among them in

an effort to minimize interference. The TPC messages allow the access points to determine the power level of signals transmitted between the access points and mobile stations, thus determining interference in the system. The power can then be adjusted between the access to reduce interference in the system (0008, 0040).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to modify Whelan with the teachings of Shpak for the purpose of further minimizing system interference.

Allowable Subject Matter

7. Claims 4 and 5 will be allowable once the 101 rejection described above has been overcome.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TEMICA M. BEAMER whose telephone number is (571)272-7797. The examiner can normally be reached on Monday-Thursday (alternate Fridays) 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Temica M. Beamer/
Primary Examiner, Art Unit 2617